IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 5284 of 2007(D)

PETITIONER:

CHANDY ABRAHAM,
S/O. LATE CHERIAN ABRAHAM, AGED 57 YEARS,
RESIDING AT EL-JIREH, RIVER DRIVE, KAKKANAD,
REP. BY POWER OF ATTORNEY HOLDER, MRS.SHEELA JOHN,
AGED 48 YEARS, W/O. K.K.JOHN, E-100, INCOME TAX
QUARTERS, PANAMPILLY NAGAR, COCHIN-36.

BY ADV. SRI.R.PADMARAJ
SRI.BIJU HARIHARAN
SRI.N.P.SETHU
SRI.P.J.ANTONY JOSEPH MARIADAS
SRI.K.M.VIKAS

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. SPECIAL TAHSILDAR (LA),
KOCHI REFINARIES LTD., VYTTILA,THRIPOONITHURA.

3. THE MANAGING DIRECTOR,
KINFRA, KINFRA HOUSE ANNEXE, ELANKON GARDENS,
VELLAYAMBALAM, THIRUVANANTHAPURAM-695 010.

BY GOVERNMENT PLEADER SHRI D. ANIL KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/06/2007 ALONG WITH W.P(C) NO.14259 OF 2007 AND CONNECTED CASE, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE NOICE DATED 15.112003 BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT P2 TRUE PHOTOSTAT COPY OF THE OBJECTION DATED 23.11.2003 BY THE PETITIONER TO THE SECOND RESPONDENT.

EXHIBIT P3 TRUE PHOTOSTAT COPY OF THE NOTICE NO.205/2003 DATED 8.12.2003 BY THE SECOND RESPONDENT TO THE PETITIONER.

EXHIBIT P4 TRUE PHOTOSTAT COPY OF THE NOTICE EATED 10.9.2006 BY THE SECOND RESPONDENT TO THE PETITIONER IN LAC NO.130/2005.

EXHIBIT P5 TRUE PHOTOSTAT COPY OF THE OBJECTION DATED 6.10.2005 ISSUED BY THE PETITIONER TO THE SECOND RESPONDENT.

EXHIBIT P6 TRUE PHOTOSTAT COPY OF THE NOTICE DATED 24.4.2007 BY THE SECOND RESPONDENT TO THE PETITIONER REQUIRING SURRENDER OF POSSESSION OF THE PETITIONER'S PROPERTY.

RESPONDENTS' EXHIBITS: NIL

K. PADMANABHAN NAIR, J.

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W.P(C) NO. 5284 OF 2007,
W.P(C) NO. 14259 OF 2007
AND
W.P(C) NO. 14757 OF 2007

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Dated this the 27th day of June, 2007

J U D G M E N T

The challenge in these Writ Petitions is directed against a Notification issued under Section 4(1) of the Land Acquisition Act in respect of the properties involved in these cases. It is contended that the Notification had already lapsed as no award was passed within the time allowed by law. Another contention raised is that the petitioners were not given any notice of award as contemplated under Section 12 (2) of the Act, but all on a sudden they were issued with notices directing them to surrender the property in their possession.

2. In Writ Petition Nos.5284 and 14259 of 2007, the Land Acquisition Officer has filed detailed counter affidavits. In Writ Petition No.14757 of 2007 he has filed a statement stating that in that Writ Petition State is adopting the same

contentions raised in the counter affidavit filed in W.P(C) No.14259 of 2007.

3. An area of 45.7901 Hectares of land comprised in various survey numbers of Kakkanad Village were notified to be acquired under Section 4(1) of the Act for a public purpose. It was contended that declaration under Section 6 of the Act was published in the Mathrubhumi daily dated 22.10.2004 and Gazette dated 20.10.2004. The period of limitation to pass award began to run from 25.10.2004. The award was passed on 7.10.2006, which is within time. So the contention that the Notification issued under Section 4(1) of the Act lapsed is only to be rejected. I do so.

4. In Writ Petition No.5284 of 2007 it is admitted by the respondents that notice of award as contemplated under Section 12(2) of the Act is not issued to the petitioner in view of the fact that a decision regarding taking over of possession of residential buildings has not been finalised. In the other two Writ Petitions there is no averment as to whether any notice of award under Section 12(2) of the Act is issued and the same was received by the petitioners concerned.

Petitioners submit that they are residing in the buildings situated in the lands involved in these Writ Petitions. So, it is only just and proper to direct the Land Acquisition Officer to issue notice to all the petitioners in the Writ Petitions under Section 12(2) of the Act before taking any further action. Time for raising the claim for enhanced compensation starts from the issuance of such a notice. Materials on record show that without issuing award notice under Section 12(2) of the Act, petitioners were directed to surrender possession of land in their occupation, which is clearly illegal. So there will be a direction to the Land Acquisition Officer not to take any further action based on the notices, if any, issued to the petitioners under Rule 15(3) of the Land Acquisition Rules before serving the petitioners notice under Section 12(2) of the Act. The respondents shall inform the petitioners whether all or any one of them are entitled to get the benefits under the rehabilitation package. In the result, the Writ Petitions are disposed of in the following manner:

The challenge on the ground that the proceedings had lapsed is found against. But there will be a direction to the

Land Acquisition Officer concerned to serve individual notice of award under Section 12(2) of the Act to all the petitioners in these Writ Petitions before taking possession of their lands. If the respondents propose to implement any rehabilitation package, that fact shall also be intimated to the petitioners.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. OF

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J U D G M E N T

7TH JUNE, 2007